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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/980,925 | 10/18/2001 | Jean-Yves Bacques | 11027.25USWO | 3360 |
| 23552 | 7590 | 10/06/2005 | EXAMINER | |
| MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903 | | | MAI, TRI M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3727 | |

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

THA

| | | | |
|------------------------------|-------------------------------|--------------------------------|--|
| Office Action Summary | Application No. 09/980,925 | Applicant(s) BACQUES ET AL. | |
| | Examiner Tri M. Mai | Art Unit 3727 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-11, 13-34 and 36-40 is/are pending in the application.
 4a) Of the above claim(s) 3, 5, 8, 10, 11, 13, 14, 17-21, 24-31, 33 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6, 7, 9, 15, 16, 22, 23, 32, 34, 36-38 and 40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Claims 3, 5, 8, 10, 11, 13, 14, 17-21, 24-31, 32, and 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention as previously set forth.

TM 2. Claims 1-~~2~~⁶, 7, 9, 15-16, 22, 23, 32, 34, 36-38, and 40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original disclosure does not teach the first transverse tray side wall being fixed to the other lid side walls, the other tray side walls being fixed to the transverse lid sidewall, and the transverse tray side wall being fixed to the transverse lid sidewall by the partially precut portions. This is a new matter rejection.

Regarding claim 22, the original disclosure does not teach the first transverse flap joint to an adjacent side panel.

TM 3. Claims 1-~~2~~⁶, 7, 9, 15-16, 22, 23, 32, 34, 36-38, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is generally confusing.

“first transverse tray side wall or other tray side walls” is confusing. It seems that “other tray side walls” excludes the first transverse tray side wall.

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“first transverse lid side wall or other lid side walls” is confusing. It seems that “other other lid side walls” excludes the first transverse lid side wall.

“comprises partially precut connecting lines, including a partially precut upper connecting lines, one or more precut portions, and/or one or more gluing points” is confusing. It seems that “and/or one or more gluing points” can be an alternative to connecting lines.

“at least four side walls” is indefinite. The container only has four sidewalls. The term “at least” suggests more than four sidewalls.

“first transverse tray side wall or the other tray side walls are fixed respectively to the first transverse lid sidewall or the other lid side walls by the one or more partially precut portions and/or the one or more gluing point” is confusing. The disclosure does not teach the first transverse tray side wall being fixed to the other lid side walls, the other tray side walls being fixed to the transverse lid sidewall, and the transverse tray side wall being fixed to the transverse lid sidewall by the partially precut portions. The only disclosed attaching means is through the adhesive between the tray and lid. The tray is fixed to the lid NOT by the precut portions, but only by adhesive. The precut portion is a part of either the tray or lid.

It is unclear what is the upper tongue as claimed. The elected embodiment shows the only portion being attached to the transverse wall is portion 26. However, this is the fascia as defined by the specification.

“at least one partially precut portion, partially pre-cut connecting lines” is confusing. It is unclear what is the difference between partially precut portion and pre-cut connecting lines. The specification fails to shed any meanings to the terminologies.

“a second transverse flap (the tray) joined to a second side of the central leaf” is confusing. It is unclear where is this partially pre-cut connecting line. It seems the second transverse flap is portion the other portion 15, and this portion 15 is joined to the central leaf by a fold line. The only precut connecting line is one of line 18, but this precut connecting line does not join to the central leaf at all. Furthermore, it is unclear which “central leaf” is meant.

“wherein a side panel of the second element (the lid) is glued to the second transverse flap (of the tray) and is joined to the central panel by a partially pre-cut connecting lines” is confusing. It is unclear where is the central panel.

The claim is confusing with respect to the orientation of the container. On one hand the wall having the grasping means 22 (the shorter wall) is called the transverse wall, then flap 15 is then called transverse flap as apparent in claim 22. The specification defines these flaps 15 as side leaves. Because of this confusion, applicant is required to labeled each element as set forth in the claim and point out where is the antecedent basis for these terms in the specification. It seems that claim 22 is not readable on the elected embodiment with respect to the second transverse having pre-cut connecting lines.

4. Claims 1, 2, 6, 7, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Alain et al. (FR2793803). Alain teaches a packing case in two sections, made of corrugated board sheet material comprising two shapes including a first shape forming a tray 10 and a second shape forming a lid 10 wherein the case comprises a first transverse sidewall 42 arranged to be grasped by a user joined to the rest of the case by precut connecting lines allowing the first wall to be manually torn off by the user from the rest of the case, the two walls of the trays are fixed to the sidewalls of the lid by gluing points 64 enabling the separation between walls by

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application of a force perpendicular to the walls (at least perpendicular to the upper edges of the walls) as shown in Fig. 4.

Regarding claim 4, as best understood view of the 112 matters above, the lid in Alain has a fascia.

Regarding claim 22, it is noted that claim 22 recites the transverse flap as an alternative to the side panel being attached. Alain teaches the transverse panel being attached to the adjacent panel.

5. Claims 1, 2, 6, 7, 15, 16, 22, 23, 32, 34, 36-38, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuhn et al. (5555982). Kuhn teaches a packing case in two sections, made of corrugated board sheet material comprising two shapes including a first shape forming a tray 19 and a second shape forming a lid 100 wherein the case comprises a first transverse sidewall 18 arranged to be grasped by a user joined to the rest of the case by precut connecting lines allowing the first wall to be manually torn off by the user from the rest of the case, the two walls of the trays are fixed to the sidewalls of the lid by precut portions 101 and gluing points enabling the separation between walls by application of a force perpendicular to the walls as claimed.

Regarding claim 6, note the recess in 8.

Regarding claim 7, 12, note figure 6.

Regarding claim 15, the second shape has three panels as claimed and joins to the first shape by gluing points as claimed.

Regarding claim 16, note the two sets of flaps at 14, 25, 31 on one side and 32, 26 on the other side.

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Regarding claim 22, Kuhn teaches an assembly of shapes comprising two shapes, each respectively formed from a central leaf or panel (104, 12) side leaves or panel (106, 110; 14, 18) with the first shape to form a tray (19) and a second shape intended to form a lid (100) of the case. The first shape 19, comprising a second transverse flap or at least one side leaf 14 joining to the second shape by at least precut portion with glue at portion 101, and a first transverse flap 18, joined on the other side to the central leaf by precut lines at 82 and in that a side panel of the second shape 106 is fit to be glued to the first transverse flap and is joint to the central panel by a pre-cut connecting line

6. Claims 1, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Vedel (EP 0647565). Vedel teaches a packing case in two sections comprising two corrugated board (pg. 3, ln. 1), first element forming a tray 1 having a first transverse tray and other tray side walls, a second element forming a lid 10 the tray and the lid form the packing case. The case further comprises partially precut lines 7 and adhesive (col. 2, ln. 44), the first transverse sidewall includes grasping means (lower edge of portion 10 in fig. 2a, or by portion 10 in fig. 1a), allowing the first transverse sidewall to be manually torn off the case. The other tray sidewall are fixed to the other lid sidewalls by strips 6 and adhesive.

7. Claims 1, 2, 6, 7, 15, 16, 22, 23, 32, 34, 36-38, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Egli (CH 652093), or in the alternative, over Egli in view of DE9105890. Egli teaches a packing case in two sections as shown in fig. 4, a first element forming a tray having first transverse tray sidewall, a second element 18 forming a lid having first transverse tray side wall. The case further comprises partially precut connecting lines as

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shown in Fig. 6. The first transverse wall includes a grasping means jointed to the case as claimed.

In the alternative, Egli teaches a grasping means. It would have been obvious to one of ordinary skill in the art to provide the precut lines 61 (Fig. 13 of DE'890) as taught by DE'890 in Egli to open the container easily.

8. Applicant's arguments filed have been fully considered but they are not persuasive. The amendment further confusing the claims as set forth in 112, 1st and 2nd paragraph rejections as set forth above. As best understood view of the 112 matters above, the claims are rejected by the prior art as set forth above.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727

